

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0006470

OAH No. 2023060194

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 11, 2023. Ronald Lopez, Individuals with Disabilities Act Specialist, represented the Westside Regional Center (WRC or Service Agency). Claimant's mother represented Claimant, who was not present. Claimant and his mother are not identified by name to protect their privacy.

Testimony and documentary evidence were received, and argument was heard. The record closed and the matter was submitted for decision on October 11, 2023.

ISSUE

Should WRC be required to refer Claimant for a Coordinated Family Support assessment for services?

EVIDENCE

The documentary evidence at hearing consisted of: Service Agency exhibits 1 through 6; and Claimant exhibits A through H. The testimonial evidence at hearing was provided by: Alex Marquez, WRC Self Determination Program Manager; Elizabeth Gomez; Kristianna Moralls; and Claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Service Agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)
2. Claimant is a 26-year-old male client of WRC. He qualifies for regional center services under a diagnosis of Autism.
3. Claimant is a participant in the Self-Determination Program (SDP).
4. In February 2023, Claimant requested that the Service Agency refer him for an assessment through the Coordinated Family Supports (CSF) Pilot Program.

5. On April 20, 2023, the Service Agency issued a Notice of Action, denying Claimant's request for the following stated reason:

WRC is unable to include this service into your SDP budget because, per the Department of Developmental Services [(Department or DDS)] Memorandum dated April 19, 2023 (attached), "At this time, the CFS Services Pilot Program is not available to participants in the SDP. The Department is evaluating how CFS services can be available to SDP participants. Additional clarification will be provided, as available."

(Exhibit 2, p. A14.)

6. On May 30, 2023, Claimant's mother submitted an Appeal Request Form (ARF) to DDS requesting a hearing to challenge the Service Agency's denial of including CFS services in Claimant's SDP budget. The ARF stated, "Regional Center should be offering services to all consumers, regardless of their service delivery model. Regional centers should not deny a consumer the ability to participate in [CFS] Services because they are in the [SDP]." (Exhibit 2, p. A9.)

Claimant's Background

7. Claimant currently lives in a home with his family. He requires 24-hour-per-day support and supervision. He has no safety awareness, and he places himself in dangerous situations. Claimant occasionally requires assistance bathing, dressing, and toileting. He cannot cook for himself.

8. In November 2019, Claimant was selected to participate in the SDP. His person-centered plan was conducted in 2019, his SDP budget was certified, and his spending plan was approved. Claimant transitioned into the SDP on June 1, 2020.

The SDP

9. The SDP is an alternative method of service delivery in the regional center system that provides participants additional flexibility and control in obtaining services to meet their Individual Program Plan (IPP) goals.

10. The centerpiece of the SDP is the annual budget and spending plan created by the parties. The Service Agency reviews spending plans to determine if the service and supports contained therein are allowable under statutory requirements. Once purchase of service authorization is given, the participant's Financial Management Service (FMS) will disburse funds to the service provider.

11. In addition to an FMS, a participant in the SDP may have an Independent Facilitator (IF). The independent facilitator assists the participant in making informed decisions about their individual budget and in locating, accessing, and coordinating services and supports to meet participant's needs and IPP goals.

CFS Pilot Program

12. Effective June 20, 2022, the creation of the CFS Pilot Program was authorized by Welfare and Institutions Code section 4688.06. The Legislature recognized the right of adults with developmental disabilities to reside in the family home and to access CFS services that are tailored to their unique needs and are respectful of the language, ethnicity, and culture of the family home.

13. The Department is authorized to issue directives to regional centers to ensure compliance with Welfare and Institutions Code section 4688.06 until regulations are adopted. (See Legal Conclusions 20 - 22.)

14. On January 27, 2023, the Department issued a multi-page directive that described the creation of CFS Pilot Program and gave instructions pertaining to the following categories: "CFS Service Description and Rates," "CFS Vendorization and CFS Outreach Plan," "Referral and Assessment Tool," "Consumer/Family Satisfaction Tool," and "Regional Center Quarterly Reporting Tool." (Exhibit C.) The January 27, 2023 directive instructed regional centers, "Recognizing that CFS is a new service, regional centers should establish an outreach plan to promote CFS to adult consumers who live with their families and to potential providers." (Exhibit C, p. B399.)

15. On February 15 and 16, 2023, the Department presented "Coordinated Family Supports (CFS) Service Community Webinars" to consumers. (Exhibit D.) In the written PowerPoint materials for the webinar, the following questions and answers were presented:

Who is eligible for CFS? Adults who are served by regional centers and who live with their family are eligible. [¶] . . . [¶]

Can I receive this service if I am a participant in Self-Determination? Yes

(Exhibit D, p. B412.)

16. Vicki Smith, Ph.D., DDS Deputy Director, Program and Program Development Division, was one of the presenters during the February 2023 webinars.

In an audio recording of one of the webinars, Dr. Smith can be heard making the following statements:

So who is eligible for coordinated family supports?

Coordinated family supports is for adults served by the regional center who live with their family. That is the eligibility. It's across all 21 regional centers. There is not a cap. . . . You're over 18. You live with your family. You would be eligible for coordinated family supports.

Can I receive the service if I'm a participant in self-determination? Absolutely yes. You can. It's a brand-new service, so you would, it would be considered a change in resource, and every case is very, very different in self-determination. If some ... Some self-determination cases may have the role of the independent facilitator doing some of these functions now and may want to look and say, "Well, now, that this is a new resource. I'd like to get my team back together and kind of determine whether my budget needs to be adjusted, because I may be receiving this in traditional or not. " And again, it's kind of identifying do you have the need first? And this is something that would help you meet that need. But yes, it is not limited or excluding self-determination. So if you're in self-determination, and that's the way you get your services through the regional center, you may still be eligible.

(Exhibit E, p. B415, audio recording link at 41:00-41:37, 43:00-44:12 minutes.)

17. The Department of Health Care Services (DHCS) administers the Medi-Cal 1915(c) Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS-DD Waiver). DDS ensures, under the oversight of DHCS, that the HCBS-DD Waiver is implemented by regional centers in accordance with Medicaid law and the State's approved Waiver application. Regional centers coordinate, provide, arrange, or purchase the services and supports available under the HCBS-DD Waiver.

18. On August 1, 2023, DHCS issued a Notice of General Public Interest (DHCS Notice) concerning a proposed amendment to the HCBS-DD Waiver. All proposed HCBS-DD Waiver amendments must be approved by the Centers for Medicare and Medicaid Services (CMS) to be effective. DHCS planned to submit the proposed waiver amendment to CMS by September 1, 2023, for a proposed effective date of December 1, 2023. The DHCS Notice stated:

This amendment proposes to add [CFS] to the HCBS-DD Waiver. CFS is a service that supports adults to continue living in the family home to maximize their independence by helping them navigate existing services and supports. CFS engages with individuals and providers to facilitate access to services and supports by:

Coordinating/developing training to ensure consistency across providers specific to the unique needs of the individual.

Assisting the individual in understanding, scheduling, and utilizing services and supports.

Developing options to meet the identified immediate and long-term needs and access community services and supports specified in the [IPP].

(Exhibit B, p. B2.)

19. On April 19, 2023, the Department issued a directive as a follow-up to its January 27, 2023 directive. The April 19, 2023 directive stated:

Self-Determination Program (SDP)

At this time, the CFS Services Pilot Program is not available to participants in the SDP. The Department is evaluating how CFS services can be available to SDP participants. Additional clarification will be provided, as available.

(Exhibit F, p. B416.)

Subpoena

20. On September 15, 2023, Claimant's mother served Dr. Smith at DDS with a Subpoena for Testimony and a Subpoena Duces Tecum (subpoena), using a form approved by OAH under Government Code section 11450.05. The subpoena requested production of documents regarding the April 19, 2023 DDS directive. In the Declaration for Subpoena Duces Tecum, Claimant was required to provide information under the section specifying, "The undersigned states that the books, papers, documents and/or other things named below and requested by this subpoena are material to the proper presentation of this case, and good cause exists for their production by reason of the following facts." (Subpoena, p. Z7.) Claimant filled in the following information: "All correspondence related to the directive of 4/19/23

concerning Coordinated Family Support Services Pilot Program for Adult Consumers who reside with their family and the Self-Determination Program.” (*Ibid.*) Claimant provided no facts indicting good cause for production of the documents.

21. On October 2, 2023, counsel for DDS sent Claimant’s mother a letter objecting to the subpoena as follows:

I am in receipt of your subpoena directed to [DDS] dated September 15, 2023, in which you have attempted to compel: (1) testimony from Vicki Smith at a fair hearing set before [OAH] on October 11, 2023, and (2) the production of records.

DDS objects to the subpoena on the grounds that it is a non-party to this proceeding, and it is not subject to discovery or OAH's subpoena power for fair hearings. OAH has recently issued an order confirming such, and I have enclosed a copy of a recent OAH order on this topic. Based on the above and the attached legal authority, DDS will not be producing Ms. Smith on October 11, 2023, and it will not be providing the records sought pursuant to the subpoena.

(Exhibit G, p. B418.)

22. The OAH order attached to the objection was a ruling issued in another consumer’s case before Frank D. Lanterman Regional Center.

23. No Motion to Quash or Motion to Compel were filed with OAH.

24. No testimony or documents were provided at the fair hearing in response to the subpoena.

25. The ALJ addressed the subpoena and objection at the outset of the fair hearing and declined enforcement of the subpoena. (See Legal Conclusions 5 -11.)

Fair Hearing Testimony and Argument

26. All witnesses testified credibly at the fair hearing in a respectful, articulate, and thoughtful manner.

27. Claimant's mother noted that, when Claimant chose to participate in the SDP, they understood that SDP participants would be treated equally to consumers in the traditional program, and that the SDP was an alternative service delivery program to provide additional flexibility and more, not less, opportunities. She feels Claimant's participation in the SDP now places him at a disadvantage if he is precluded from CFS based solely on his SDP participation.

28. Claimant's mother argued that nothing in the statute creating the CFS program (Welf. & Inst. Code, § 4688.6) precludes SDP participants. She understood that CFS was established for all adults who still live with their parents to provide more intensive supports. She noted the January 2023 directive detailing the CFS program implementation did not indicate that SDP participants would be excluded. Consequently, soon after the January 2023 directive, Claimant requested an assessment for CFS, and the Service Agency indicated it would determine how to obtain vendors and meet again to discuss the issue. Claimant's mother's also confirmed Claimant's access to CFS during the February 2023 DDS webinars wherein Dr. Smith and the written materials confirmed his eligibility. However, Claimant's request for an assessment referral was denied after issuance of the April 19, 2023

directive. Claimant's mother argued the April 19, 2023 directive provides "no justification for why a whole class of people could not access [CFS]." She noted that participants in SDP are "the only class of people excluded." She pointed out Claimant is being denied services and due process without out any justification.

29. Elizabeth Gomez is the Director of Integrated Community Collaborative, an organization founded by parents and self-advocates served by WRC. Ms. Gomez was involved in the advocacy to obtain CFS. She noted that no services were previously available to provide the supports needed for families that have adult children with developmental disabilities living at home. Ms. Gomez recalled that, during meetings with DDS representatives to discuss CFS, she was never told SDP participants would not be eligible.

30. Kristianna Moralls is an IF, and she is familiar with the SDP. She noted that there is no other program like CFS available. She does not believe there is anything in the CFS program that would render SDP participants ineligible. To the contrary, she opined that a consumer of the regional center should have access to all necessary services. She noted the only difference between an SDP participant and a traditional program participant is service delivery. In the traditional system, services from vendors are paid by the regional center, and in the SDP, services are paid by an FMS through the consumer's approved SDP budget. She does not know of any other service available to people in traditional program which is unavailable to SDP participants. She opined that the exclusion of SDP participants from CFS is arbitrary.

31. WRC SDP Manager, Alex Marquez, confirmed that the SDP is an alternative method of service delivery in the regional center system that provides participants with additional control and flexibility in shaping service delivery to meet

their IPP goals. He understands that CFS is a service for consumers living in their family home to provide support to access resources.

32. Mr. Marquez explained that Claimant was denied a referral for CFS assessment due to the April 2023 directive stating that SDP participants are not yet eligible for CFS. He noted that regional centers are required to follow directives issued by DDS. Mr. Marquez acknowledged that, although the April 2023 directive indicated DDS would provide additional clarification, it has been about six months, and no additional clarification has been provided.

33. Mr. Marquez admitted that, if Claimant were in the traditional system and not SDP, he would be eligible for CFS assessment. Mr. Marquez also acknowledged that CFS is the only service for which traditional program consumers are eligible but SDP participants are not.

34. Mr. Marquez noted that there is one service, the Crisis Response Project (CRP), provided by WRC that traditional program consumers receive but SDP participants are precluded from including in their SDP budget due to the way WRC contracts for that service. The SDP participants are eligible for CRP service but rather than including it in their SDP budget, WRC funds the service "outside the person's budget." Mr. Marquez has not received any instruction from DDS regarding whether SDP participants could receive CFS funding "outside" their SDP budget.

35. Claimant's mother noted that Claimant needs more intensive supports, and Ms. Gomez opined Claimant he would benefit tremendously from CFS.

///

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for a CFS assessment, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. In seeking a referral for a CFS assessment, Claimant bears the burden of proving by a preponderance of the evidence that the referral is required. Claimant has met his burden of proving he is entitled to the referral he seeks.

4. A proposed decision rather than a final one is issued because this case involves federal funding under the SDP. (Welf. & Inst. Code, § 4712.5, subds. (d) & (e).)

Subpoena

5. In objecting to Claimant's subpoena for Dr. Smith's testimony and production of "all correspondence" related to the April 19, 2023 directive, DDS counsel noted only that "DDS is a non-party to the proceeding and not subject to discovery." (Factual Finding 20.) No other grounds (e.g., overly broad request, deliberative privilege, etc.) were raised. The Department based its objection on a ruling by another ALJ in a different proceeding. (Exhibit H.) That ruling noted correctly that fair hearings are governed by the Lanterman Act, not the Administrative Procedure Act (APA) provisions for formal hearings set forth in Government Code sections 11500 through 11529. The ruling stated, "Since the APA does not control these proceedings, Claimant cannot use those provisions to obtain discovery. Further, Government Code section 11507.7 is the statutory authority for one party to a formal administrative hearing to obtain documents from another party. DDS is not a party to this litigation." (Exhibit H, p. B423.) However, the ruling in Exhibit H, which focused on the exclusive APA discovery statute (Gov. Code, § 11507.7), is not precedential and does not control in this proceeding.

6. Dr. Smith and DDS are not parties to this action. Discovery exchange between parties (in this case, Claimant and WRC) is typically set forth in statute. In this case the pre-hearing evidence exchange requirements are specified in Welfare and Institutions Code section 4712. However, a subpoena is not party discovery. It is a tool for obtaining testimony and documents not limited to those in possession of the parties to an action.

7. The use of subpoenas to obtain documents from non-parties in this proceeding is not specifically precluded. Welfare and Institutions Code section 4415 provides, "Except as in this chapter otherwise prescribed, the provisions of the

Government Code relating to state officers and departments shall apply to the [DDS].” Additionally, Government Code section 11410.20, subdivision (a), provides that the chapter dealing with subpoenas (commencing with Government Code section 11400), “applies to all agencies of the state,” unless “otherwise expressly provided by statute.” Government Code section 11405.30 defines “agency” as a “board, bureau, commission, department, division, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head.” Furthermore, the portion of the APA in which subpoena authority is found “supplements the governing procedure by which an agency conducts an adjudicative proceeding” (Gov. Code, § 11415.10, subd. (b)), and “[a]n agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under [the APA]” (Gov. Code, § 11450.05, subd. (b)).

8. However, Welfare and Institutions Code section 4706, subdivision (a), provides “all issues concerning the rights of persons with developmental disabilities to receive services under this division shall be decided under this chapter, including those issues related to fair hearings. . . .” Additionally, the Lanterman Act is an apparently comprehensive statutory scheme to provide services and supports to persons with developmental disabilities, and it details the rights and responsibilities for those involved in the fair hearing process. No subpoena procedures are included in the Lanterman Act. Moreover, even if the Government Code subpoena provisions were applicable to Lanterman Act fair hearings, the Lanterman Act provides no mechanism for enforcement of APA subpoena provisions.

9. Even assuming the Lanterman Act allows issuance of a subpoena to a non-party for production of documents at fair hearing, Claimant failed to meet specific

statutory requirements. Although no party in this case filed a motion to compel or a motion to quash pursuant to Government Code section 11450.30, the subpoena was briefly addressed at the fair hearing as set forth below.

10. While the subpoena specified a category of documents for production, the affidavit in support of the subpoena duces tecum did not contain a sufficient statement of good cause for production of the documents, nor did it set forth in detail the materiality of the documents, as required by Government Code section 11450.20 and Code of Civil Procedure section 1985, subdivision (b). (Government Code section 11450.20 states that subpoenas duces tecum shall be issued in accordance with Code of Civil Procedure sections 1985 to 1985.4. Code of Civil Procedure section 1985, subdivision (b), requires the affidavit supporting a subpoena duces tecum to: show good cause for the production the documents described in the subpoena; specify the exact matters to be produced; and set forth in detail the materiality of those matters to the issues involved in the case.) Moreover, the category of documents sought by the subpoena is overly broad, pertains to documents which may not be material to the issues in this case, and "amounts to a fishing examination of all the books, papers and documents" of a third party and ultimate decision maker, DDS. (See, *Los Angeles Transit Lines v. Superior Court* (1953) 119 Cal.App.2d 465, 467- 468.) Consequently, the subpoena duces tecum is invalid on its face, overly broad, and will not be enforced.

11. Additionally, as noted on the record, the evidence sought through subpoena would not necessarily assist in the ultimate determination in this case. Regional centers must typically comply with Department directives but cannot, and should not, rely on either extraneous documents or opinions of one Department employee that do not carry the weight of Department directives. Rather, the ultimate

determination in this case is based on interpretation of the applicable statutes, as set forth below.

Analysis re: SDP Funding for CFS Assessment

GENERAL PROVISIONS OF THE LANTERMAN ACT

12. Under the Lanterman Act, developmentally disabled persons have a right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) Such services and supports are defined as “specialized services and supports, or special adaptations of generic services and supports, directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive . . . life.” (Welf. & Inst. Code, § 4512, subd. (b).)

13. The Lanterman Act mandates an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The determination of which services and supports are necessary for each consumer shall be made through the IPP process and shall “reflect preferences and choices of the consumer and reflect the cost-effective use of resources.” (Welf. & Inst. Code, § 4646, subd. (a).)

SDP – WELFARE & INSTITUTIONS CODE SECTION 4685.8

14. The Lanterman Act provides an alternative model for funding services and supports - the SDP model. Welfare and Institutions Code section 4685.8 governs

how regional centers deliver services and supports to consumers (also referred to as “participants”) and their families participating in the SDP.

15. The purpose of the SDP is “to provide participants and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP.” (Welf. & Inst. Code, § 4685.8, subd. (a).) “Self-determination” is defined as “a voluntary delivery system consisting of a comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion.” (*Id.*, subd. (c)(6).)

16. The IPP team must use a person-centered planning process to develop the participant’s IPP. The IPP team details the participant’s goals and objectives to be met through the purchase of “participant-selected services and supports” and determines the individual budget sufficient to assist the participant in achieving the IPP outcomes. (Welf. & Inst. Code, § 4685.8, subd. (i).) The participant then develops a “spending plan” to “to use their available individual budget funds to purchase goods, services, and supports necessary to implement their IPP.” (*Id.*, subd. (c)(7).)

17. When developing the budget used for the SDP, the IPP team must “determine the services, supports, and goods necessary for the [participant], based on the needs and preferences of the [participant], and when appropriate the [participant's] family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option[.]” (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).) Participants in the SDP model “shall utilize the services and supports available within the Self-Determination Program only when generic services and

supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).) Additionally, the SDP “shall only fund services and supports . . . that the federal [CMS] determines are eligible for federal financial participation.” (Welf. & Inst. Code, § 4685.8, subd. (c)(6).)

18. Welfare and Institutions Code section 4685.8, subdivision (d), provides, in pertinent part:

A regional center shall not require or prohibit participation in the Self-Determination Program as a condition of eligibility for, or the delivery of, services and supports otherwise available under this division.

19. Welfare and Institutions Code section 4685.8, subdivision (k), provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5. A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

CFS- WELFARE & INSTITUTIONS CODE SECTION 4688.06

20. The creation of the CFS Pilot Program was authorized by Welfare and Institutions Code section 4688.06, which states:

(a) Consistent with state and federal law, the Legislature recognizes the right of adults with disabilities to reside in the family home. The Legislature further recognizes that adults with developmental disabilities, and their families, may need coordinated family support services that are tailored to the unique needs of the consumer and that are respectful of the language, ethnicity, and culture of the family home.

(b) The department shall establish a Coordinated Family Support Services Pilot Program for adults who live with their families. The pilot program may focus on improving equitable access to services and supports and reducing ethnic and racial disparities in purchases of services.

(c) The services provided by the Coordinated Family Support Services Pilot Program shall be flexible and tailored to assist the consumer to remain in the home of their family for as long as that remains the preferred living option for the consumer and their family.

(d)(1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may issue administrative program directives to ensure compliance with this section until the time regulations are adopted. It is the intent of the Legislature that the department be allowed this temporary

authority as necessary to implement program changes only until completion of the regulatory process.

(2) Any regulation or administrative program directive issued pursuant to this subdivision shall include key elements of the Coordinated Family Support Services Program, including eligibility criteria, service design, and standards for vendors.

(3) The department shall collaborate with stakeholders to obtain input about key elements prior to the issuance of regulations or administrative program directives.

Stakeholders shall include, but not be limited to, consumers and family members, including those from ethnically and racially diverse backgrounds, regional centers, the protection and advocacy agency described in subdivision (i) of Section 4900, the Office of Clients' Rights as described in Section 4433, the State Council on Developmental Disabilities, providers who deliver supported living services described in Section 4689, and providers with experience delivering services to adults living in the home of a parent or a family member, including independent living skills services described in Section 4688.05.

21. The Department is authorized to issue directives to regional centers to ensure compliance with Welfare and Institutions Code section 4688.06 until regulations are adopted. (Welf. & Inst. Code, § 46608.06, subd (d)(1).) Any directive is

required to “include key elements of the [CFS] Program, including eligibility criteria, service design, and standards for vendors.” (*Id.* at subd. (d)(2).)

22. Regional centers must typically comply with Department directives. Welfare and Institutions Code section 4639.6 provides, in pertinent part: “The regional center shall comply with any directive issued by [DDS]. The directive shall not be in conflict with existing statutes or regulations.”

23. In this case, the April 19, 2023 directive concluded that CFS services provided under Welfare and Institutions Code section 4688.06 were “not available” to SDP participants. Agency interpretation of statutes are generally given deference. California Courts of Appeal have found, “‘Although not necessarily controlling . . . [,] the contemporaneous administrative construction of [an] enactment by those charged with its enforcement . . . is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.’ [Citations omitted.]” (*Bernard v. City of Oakland* (2012) 202 Cal. App. 4th 1553, 1565.) However, the California Supreme Court has noted that “the binding power of an agency’s *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 7.) Deference is warranted when the “agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.” (*Id.* at p. 12.) However, “[t]he deference due an agency interpretation . . . turns on a legally informed, commonsense assessment of their contextual merit. The weight of such a judgment in a particular case . . . will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and

later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” (*Id.* at pp. 14-15.)

23. Here, DDS’ April 19, 2023 directive is cursory and vague. It does not “include key elements of the [CFS] Program, including eligibility criteria, service design, and standards for vendors” as required by statute. (Welf. & Inst. Code, § 4688.06, subd. (d)(2).) The April 19, 2023 directive does not explain its statutory interpretation that SDP participants are excluded from CFS. Without such an explanation, the statutory interpretation and preclusion of services to one class of regional center consumers is apparently arbitrary and unsupported by the law. The April 19, 2023 directive fails to indicate a careful, thorough consideration of Welfare and Institutions Code sections 4688.06 (creating CFS) and 4685.8 (governing the SDP) or provide any reasoning for the statutory interpretation. Thus, the April 19, 2023 directive is not entitled to any deference.

24. Furthermore, the April 19, 2023 directive appears to be in conflict with the applicable statutes. Given the language of Welfare and Institutions Code sections 4688.06 and 4685.8, there is no apparent basis for exclusion of SDP participants from accessing CFS. Rather, Welfare and Institutions Code section 4685.8 bars regional centers from prohibiting participation in SDP “as a condition of eligibility for, or the delivery of, services and supports” (subd. (d)) and from prohibiting “the purchase of any service or support that is otherwise allowable under [section 4685.8]” (subd. (k)).

CONCLUSION

25. Given the foregoing, WRC’s refusal to refer Claimant for a CFS assessment should be overturned.

ORDER

Claimant's appeal is granted. Westside Regional Center's refusal to refer Claimant for a CFS assessment is overturned.

Claimant shall be referred for a CFS assessment, and the CFS assessment shall be included in Claimant's SDP budget.

DATE:

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023060194

Vs.

DECISION BY THE DIRECTOR

West Side Regional Center

Respondent.

ORDER OF DECISION

On October 19, 2023, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

For the reasons explained, the attached Proposed Decision is rejected, and the Department instead holds as follows:

The Proposed Decision acknowledges that a regional center must comply with a directive issued by the Department (see Welf. & Inst. Code, § 4639.6) but concludes that the Department's April 19, 2023, Directive is inconsistent with the requirements of Welfare and Institutions Code section 4688.06, and therefore not entitled to any judicial deference. This conclusion is in error. Read in its entirety, section 4688.06 gives the Department broad discretion in creating and crafting the Coordinated Family Support Services Pilot Program (CFS Program). Section 4688.06, subdivisions (b) and (c), authorizes the Department to create the CFS Program and make it "flexible and tailored" to consumer needs. Subdivision (d) then gives the Department broad authority to establish administrative directives to effectuate the CFS Program until final regulations are issued. How to craft, execute, and define the scope of the CFS Program is therefore left solely within the discretion of the Department. Nothing in subdivision (d) requires that the Department issue a directive that incorporates every element or component listed in subdivision (d)(2) as the Proposed Decision concludes. Indeed, such an

interpretation would undermine the flexibility the Legislature afforded the Department in implementing the CFS Program, where the Department can choose to craft individualized directives addressing any element listed in subdivision (d)(2). (See *California Assn. of Retail Tobacconists v. State of California* (2003) 109 Cal.App.4th 792, 821 [where the Legislature assigns broad discretion to an agency to accomplish goals specified in the legislative enactment, the agency retains the ultimate power to control to refine and expand the delegated responsibility]; *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 84 [agency interpretation is afforded deference when legislative text requires the agency to exercise broad discretion]). The Proposed Decision also erred in failing to consider Enclosures A, C, and D issued concurrently with the Directive on April 19 and 21, 2023, and failed to read these materials together or in their entirety. The Directive and Enclosures together identify key elements of the CFS program as required by subdivision (d)(2). Thus, the Department's April 19, 2023, Directive which makes CFS currently unavailable for SDP participants does not violate section 4688.06 and is fully enforceable and binding on WRC.

Additionally, SDP participants may only spend their budget on federally reimbursable services, as required by Welfare and Institutions Code section 4685.8, subdivisions (d)(3)(G), (e), and (f). Welfare and Institution Code section 4688.06 does not mandate that CFS services must be immediately federally reimbursable. Thus, the Department may exclude CFS for SDP participants at this time, and the Department may choose, if and when, to permit funding for non-federally reimbursable services outside the SDP budget.

Lastly, the Department rejects the language in the Proposed Decision related to the subpoena issued by Claimant against the Department as unnecessary dicta that does not help resolve the case. (See *County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 388 [dicta is not binding].)

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code

section 4713, subdivision (b), within 15 days of receiving the Decision or appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

ORDER

Claimant's appeal is rejected. Westside Regional Center's decision to decline referring Claimant for Coordinated Family Supports is affirmed.

IT IS SO ORDERED on this day: _____.

Nancy Bargmann, Director

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023060194

Vs.

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Westside Regional Center,

Respondent.

RECONSIDERATION ORDER

On November 30, 2023, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision issued in this matter by the Director on November 15, 2023.

The claimant asserts that reconsideration is required because the Department issued a new directive after the Final Decision was issued that permits consumers participating in self determination to request Coordinated Family Support (CFS) services outside the SDP budget. The application for reconsideration is denied. There is no mistake of fact or law or clerical error in the Final Decision and it was legally sound at the time of issuance. (See Welf. & Inst. Code, § 4713, subd. (b).) Claimant does not assert otherwise.

The Department's November 22, 2023, Directive with its Enclosures A, B, and C, now permits Self Determination Program (SDP) participants to receive funds for CFS services outside of the SDP participant's budget. Claimant is free to make a renewed request for CFS services from Westside Regional Center consistent with this Directive.

IT IS SO ORDERED on this day _____.

_____ for
Nancy Bargmann, Director